

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Fred Baah,	:	
	:	Civil Case No. 2:08-cv-00634
Petitioner	:	Criminal No. 2:04-cr-00195
v.	:	Judge Marbley
United States of America,	:	Magistrate Judge Abel
Respondent	:	

ORDER

Petitioner Fred Baah, a federal prisoner, brings this action for writ of habeas corpus under 28 U.S.C. §2255. This matter is before the Court on Magistrate Judge Abel's July 1, 2008 Report and Recommendation that the petition for writ of habeas corpus under 28 U.S.C. §2255 be denied.

No objections to the Report and Recommendation have been filed. Upon *de novo* review as required by 28 U.S.C. §636(b)(1)(B), the Court ADOPTS the Report and Recommendation.

The Report and Recommendation accurately recites the facts underlying petitioner Baah's claim:

Petitioner Fred Baah pleaded guilty to one count each of conspiracy to import more than one kilogram of heroin into the United States, conspiracy to import more than 100 grams of heroin into the United States, and conspiracy to distribute and possess with intent to distribute more than one kilogram of heroin. Before sentencing, the United States moved for a three level downward departure from the Guideline range of

135 to 168 months to a range of 97 to 121 months (doc. 56). On October 11, 2005, the Court sentenced Baah to 97 months incarceration. He did not appeal that sentence.

On January 9, 2006, the United States filed a second motion for a three level downward departure to a Sentencing Guideline range of 78 to 97 months in prison (doc. 66). On February 28, 2006, the Court granted that motion and reduced Baah's sentence to 72 months in prison. He did not appeal the sentence.

July 1, 2008 Report and Recommendation, at pp. 1-2 (doc. 87).

Petitioner now seeks a further reduction of his sentence based on his post-sentence conduct.

The Magistrate Judge concluded that the petition for writ of habeas corpus is barred by the one-year period of limitation established by 28 U.S.C. § 2255, 6th paragraph. The judgment of conviction against Baah was filed October 11, 2005. He did not appeal. On February 28, 2006, the Court reduced Baah's sentence. He again did not appeal. As the Magistrate Judge held, assuming Baah's sentence became final ten days after the February 28, 2006 re-sentencing, he did not file this § 2255 petition until more than two years later. As a result, the § 2255 petition is barred by the statute of limitations.

The petition for writ of habeas corpus under 28 U.S.C. § 2255 is DENIED. This action is hereby DISMISSED as barred by the one-year statute of limitations established by 28 U.S.C. § 2255, 6th paragraph. The Clerk of Court is DIRECTED to enter JUDGMENT for respondent.

s/Algenon L. Marbley
Algenon L. Marbley, Judge
United States District Court